

EXHIBIT 6

TO

PLAINTIFF'S STATEMENT OF FACTS

IN SUPPORT OF

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT

Maricopa County Community College)
District)
)
v.)
)
Dr. Cleopatria Martinez,)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Tempe, Arizona
November 18, 2013
9:32 a.m.

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1 HEARING, PUBLIC SESSION, BEFORE THE
2 ADMINISTRATIVE HEARING COMMITTEE OF THE MARICOPA COUNTY
3 COMMUNITY COLLEGE DISTRICT, in the matter of Cleopatria
4 Martinez, held at 9:32 a.m. on November 18, 2013, at the
5 Maricopa County Community College, 2411 West 14th
6 Street, Tempe, Arizona, in the presence of:

7 Dr. Keith J. Crudup, Chairperson

8 Dr. Nora A. Reyes

9 Dr. Carlos F. Caire

10
11 FOR THE DISTRICT:

12 Mr. Pavneet Singh Uppal, Esq.
13 Ms. Shayna Blach, Esq.
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15 FOR THE APPELLANT:

16 Mr. Steven Montoya, Esq.
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18 Phoenix, Arizona 85012

19 ADVISOR TO THE COMMITTEE:

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21 Mr. Taylor R. Bell, Esq.
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23 (Note: There are various members of the public
24 present throughout the proceedings.)
25

I N D E XWITNESSPAGE

Sean Garrison

Direct Examination by Mr. Uppal.....26

Cross-Examination by Mr. Montoya.....83

Redirect Examination by Mr. Uppal.....111

Cassandra Kakar

Direct Examination by Ms. Blach.....117

Cross-Examination by Mr. Montoya.....143

Redirect Examination by Ms. Blach.....157

Anna Solley

Direct Examination by Mr. Uppal.....158

Cross-Examination by Mr. Montoya.....163

Cleopatria Martinez

Direct Examination by Mr. Montoya.....172

Cross-Examination by Mr. Uppal.....227

Further Cross-Examination by Ms. Blach.....267

Redirect Examination by Mr. Montoya.....271

I N D E XWITNESSPAGE

Fredric D. Bellamy

Direct Examination by Mr. Montoya.....272

Cross-Examination by Mr. Uppal.....293

Redirect Examination by Mr. Montoya.....310

P R O C E E D I N G S

CHAIRPERSON CRUDUP: I convene the Administration Hearing regarding the Statement of Charges brought by the Maricopa County Community College District, which for the purposes of this hearing we will call Phoenix College against Cleopatria Martinez.

We have a court reporter present and a record will be made of this hearing.

Welcome, everyone. We are the Hearing Committee. I wanted to read the MCCCCD charges against Dr. Cleopatria Martinez. My name is Dr. Keith Crudup, this is Dr. Nora Reyes, and this is Dr. Carlos Caire.

Would counsel and the parties please introduce themselves starting with Phoenix College and then Dr. Martinez.

MR. UPPAL: Good morning. Mr. Chairman and Members of the Committee, my name is Pavneet Uppal; with me is my colleague Shayna Balch, we're from the law firm of Fisher & Phillips, and we represent the District in today's hearing. I also want to introduce my client, President Anna Solley. She is here with us. She is the District representative and President of Phoenix College.

And thank you for your time and look forward to

1 this hearing.

2 MR. MONTOYA: Good morning. My name is Steven
3 Montoya. I'm a lawyer here in Phoenix. This is my
4 client, Dr. Cleopatria Martinez. She's a professor of
5 mathematics at Phoenix College, who's worked for the
6 District for 28 years.

7 CHAIRPERSON CRUDUP: Thank you.

8 MR. MONTOYA: You're welcome.

9 CHAIRPERSON CRUDUP: Are there any witnesses
10 present in the hearing room -- other than -- no other
11 witnesses?

12 We will ask witnesses who have not testified to
13 remain outside the hearing room. Once -- once the
14 witness has testified, they may remain if we have room.
15 I don't think we have much room. Naturally, Dr. Anna
16 Solley and Dr. Cleopatria Martinez who will be witnesses
17 are allowed to remain in the room as they are the client
18 representatives or the client herself.

19 The Hearing Committee has reviewed all the
20 exhibits, briefs, et cetera. We ask the parties to
21 cover the major points of the case. Since the rules of
22 evidence do not apply in administrative hearings, the
23 Hearing Committee is admitting all that has been
24 submitted into evidence to become part of the record.

25 We will now begin the case. The Hearing

1 Committee will allow each side ten minutes each for an
2 opening statement beginning with Phoenix College and
3 then Dr. Martinez.

4 MR. UPPAL: All right. Members of the
5 Committee, good morning. I want to proceed with my
6 opening statement and take you through the charges and a
7 brief summary of the evidence that you will be hearing
8 today. This will also show, I believe, conclusively by
9 the time that you listen to all the evidence -- and
10 thank you for reviewing the materials that we have
11 submitted -- that the recommendation and the request to
12 terminate Dr. Martinez's employment should be
13 recommended by this Committee to the full Board.

14 As you hear the evidence today, I ask you to
15 keep a couple of things in mind as we launch into my
16 summary as well as the main presentation, and it's the
17 following: This is not a court of law. So, the
18 technical rules as you -- as Mr. Crudup -- Dr. Crudup
19 just mentioned, the rules of evidence such as --
20 generally, the rules of evidence do not apply.
21 Similarly, the sorts of things that you hear in the
22 court of law or sorts of things that you might here in a
23 TV drama such as something must be proven beyond a
24 reasonable doubt or by preponderance of the evidence,
25 those standards likewise do not apply.

1 So, what I'm going to ask this Committee is as
2 you evaluate the evidence, as you evaluate the
3 credibility of the witnesses which you will need to do,
4 as you review the documents, apply the standards of
5 common sense; because at the end of the day, this
6 Committee is not caring out the ultimate decision,
7 that's up to the Board. This Committee is charged with
8 making a recommendation to the Board.

9 And I believe that if you apply a standard of
10 common sense, you will see that there is a mountain of
11 evidence in support of the charges, the charges as we
12 will go through basically boil down to three points,
13 which is: One, that Dr. Martinez has violated both the
14 law and the District's rules with respect to
15 misappropriating, misusing, and plain stealing
16 copyrighted materials, that's really what we're talking
17 about.

18 Copyright involves ownership. And here we have
19 a situation where Dr. Martinez, unfortunately,
20 misappropriated and used on her own, materials from
21 three copyrighted textbooks. Here they are. They look
22 like textbooks, they smell like textbooks, they feel
23 like textbooks, and when you open to the second page,
24 there is a copyright notice. There is no doubt about
25 this issue.

1 Likewise, after you hear the evidence, I submit
2 to you that there will really be no reasonable basis to
3 dispute -- and, indeed, Dr. Martinez has never disputed
4 -- that she copied material without permission, without
5 attribution, and in violation of the copyright holder's
6 rights, and inserted them into her own materials which
7 she distributed to her class. And it doesn't matter
8 what her reasons were behind that. The fact is that
9 that act constitutes a violation of copyright and it
10 exposes the District to hundreds of thousands, perhaps
11 even a million dollars in damages.

12 And you will hear expert testimony on this
13 issue.

14 The second major point is that Dr. Martinez
15 then after the District took actions to address her
16 violation of copyright, it was forced to take actions
17 including imposing restrictions upon her copying
18 privileges. Basically, an instructor normally if they
19 adhere to the rules has a right to submit requests for
20 copying to Phoenix Colleges online copy center. Because
21 of these repeated violations, that privilege -- and it
22 is a privilege -- was restricted with respect to Dr.
23 Martinez. In order to address her copyright violations,
24 restrictions had to be imposed upon her right to submit
25 materials to the copy center.

1 In essence, the District imposed a series of
2 restrictions after she violated copyright, after they
3 tried to explain it to her, after they tried to counsel
4 her, after she still continued to violate the copyright
5 rules, the District imposed a requirement that, in
6 essence, her materials that she wanted to use during her
7 classes had to be pre-reviewed, not for purposes of
8 interfering with her academic freedom, but simply and
9 plainly and only, for looking at the fact as to whether
10 those materials, whether or not they contained
11 copyrighted materials that are being used without
12 permission.

13 We had to do this. There was no other
14 alternative in light of the liability situation that Dr.
15 Martinez had created. Dr. Martinez repeatedly violated
16 those copyright restrictions -- excuse me, copying
17 restrictions.

18 Instead of submitting her materials for
19 pre-review, instead of using approved textbooks, instead
20 of having her Department Chairman review the materials
21 to make sure there was no copyright infringement, she
22 repeatedly tried to circumvent these restrictions by
23 directly printing things to the Department printer; by
24 going outside to Staples and making copies on her own,
25 all so she could avoid the review procedures that were

1 put in place to prevent the liability that she had
2 exposed the District to for copyright infringement.

3 Second major issue is as a result of her
4 copyright violations and her attempts to circumvent the
5 restrictions that were imposed upon her, her pattern of
6 conduct culminated in a situation where instead of
7 having students buy textbooks instead of having students
8 -- instead of submitting materials for pre-review for
9 the District to make sure that they didn't contain
10 copyright infringement; her behavior culminated in a
11 situation where she took materials that she wanted to
12 use in class and as the evidence will show and went to
13 Staples and made copies. This too was an act of
14 circumvention. She then took those materials that she
15 had copied at Staples and distributed them to her class
16 and asked her class to pay for those materials.

17 Now, I want to be very clear here. We're not
18 claiming that she turned a profit on this; but, that's
19 not the issue. This was, again, another act of
20 circumvention, another act to avoid the restrictions
21 that had been put in place, and in doing so she violated
22 the District cash-handling rules, which was the ultimate
23 straw that broke the camel's back.

24 You are all familiar with the cash-handling
25 rule. It is a rule that states that unless you have

1 prior permission, you cannot sell anything to your
2 students; you cannot sell Tupperware, you can't sell
3 lottery tickets, you can't sell a novel, and you can't
4 sell course materials. And it doesn't matter whether or
5 not your intent is to try to turn a profit, because the
6 reason for the rule is different. The reason for the
7 rule -- I'm sure it will make common sense to you, but
8 it will also be explained through testimony, the reason
9 for the rule is that an instructor is in a position of
10 power and authority over his or her students. So,
11 imagine a situation where you're an instructor and you
12 say, you require, you recommend, or any way imply to
13 your students that they are required or needs to in some
14 way buy materials from you and pay for them.

15 What is a student going to think?

16 I think most of you have been instructors at
17 one time or another or you might already be. You know
18 what the student is going to think, you're in a position
19 of authority over them. The student is going to think
20 that they have to buy these materials because if they
21 don't buy the materials they may suffer some kind of
22 detriment with respect to their grades or recommendation
23 or whatever authority the instructor holds, and they
24 will conclude that they must buy the materials.

25 CHAIRPERSON CRUDUP: About two more minutes.

1 MR. UPPAL: Thank you.

2 That is the reason why the cash-handling rule
3 is in place, it's to prevent an abuse of power.

4 So, when -- what happened here is that a
5 student came to the District and said that he had bought
6 -- or, she had bought these materials from Dr. Martinez,
7 but Dr. Martinez would not give her a receipt. Well,
8 why? Because common sense would tell you why. She
9 would not give a receipt because she already knew she
10 was violating the rules.

11 So, when this was discovered, the District took
12 action to enforce this rule, and the action it took was
13 first meet with Dr. Martinez and try to counsel her as
14 it had done previously with the copyright issues. Dr.
15 Martinez literally walked out of that meeting. She
16 would not listen to that counseling. Then she was
17 instructed to contact the students with respect to whom
18 she violated the cash handing rules; she did not do so.
19 So, then she was told by Dr. Solley and by Dr. Kakar
20 that she needed to issue refunds. She still did not
21 issue refunds. The District checked on whether or not
22 she was complying with the directive to issue refunds
23 for the materials she had sold in violation of the
24 cash-handling rule. She did not do so.

25 In fact, a spot check of the students who were

1 owed this commission --

2 CHAIRPERSON CRUDUP: Time.

3 MR. UPPAL: If I could wrap up in 15 seconds.

4 CHAIRPERSON CRUDUP: Okay.

5 MR. UPPAL: -- discovered that she had not
6 issued the refunds. So, finally, she was instructed she
7 had to produce cancelled checks and she still has not
8 done so.

9 That's why we're here, it is a pattern of
10 conduct that creates liability and is plainly
11 unacceptable. Thank you.

12 CHAIRPERSON CRUDUP: Thank you.

13 MR. MONTOYA: How much time do I have?

14 CHAIRPERSON CRUDUP: Ten minutes.

15 MR. MONTOYA: Ten minutes. I'll try to keep it
16 in mind.

17 The evidence is going to be clear that what my
18 friend Mr. Uppal has told you this morning is nonsense.
19 There is no copyright violation; that is ridiculous.
20 There's something called the Fair Use Doctrine.
21 Scholars since I was in college have been making copies
22 of other people's publications for class work pursuant
23 to the copyright statute without violating any law.

24 Most recently I submitted an opinion,
25 coincidentally decided on Friday of last week, in the

1 case of Authors Guild versus Google. I challenge you, I
2 beg you to get on Google Book, and to plug in the book
3 that's on your desk. You can read 90 percent of it on
4 Google Book for nothing and a federal court ruled that
5 that didn't violate the author's or the publisher's
6 copyright.

7 We have an expert who's been litigating
8 copyright cases for 25 years in the Valley. His name is
9 Fred Bellamy. He's reviewed all these materials and he
10 thinks that the District's allegation that Cleopatria
11 Martinez has violated the copyright law is preposterous.
12 In his words, trumped up. She didn't violate the
13 copyright laws; that is ridiculous.

14 Read the case, get on Google Book and look for
15 yourself. Looking at Google Book -- that makes what
16 Ms. -- Professor Martinez did infinitesimally small.
17 She didn't violate the copyright law; that is
18 ridiculous.

19 In reference to the copyright materials.
20 Everyone knows, you heard of the saying, even a dog
21 knows the difference between getting tripped on and
22 kicked. Anyone knows the difference between selling --
23 hey, I'll sell -- I'm Starbucks, I'll sell you this cup
24 of coffee; and getting reimbursed for something: Hey,
25 I'm going to Starbucks, you want me to pick something

1 up, you can pay me when we get back? That's not selling
2 anything.

3 We'll read the District rules regarding selling
4 or money handling in the course of the hearing and they
5 don't even apply to the situation.

6 The materials that she actually copied, the
7 District was willing to copy them only one-by-one, like
8 one segment of the material per segment. She offered
9 her students: Hey, if you want to borrow mine and go
10 copy it yourself, go ahead. You can. If you want me to
11 copy them all at Staples, we can do that too. She was
12 reimbursed. Not only was she not selling something, she
13 was getting reimbursed for something and she lost money
14 on it.

15 One thing that is completely absent from the
16 Administration's case is any look at this scholar in her
17 totality. And you're scholars, and I urge you to do
18 that, that is your obligation to do.

19 This woman worked her way based on scholarships
20 through undergraduate and through graduate school. She
21 ultimately was awarded a Ph.D. through the University of
22 Colorado all on scholarships based upon her merit. Her
23 mother had a third-grade education. She grew up in the
24 projects on welfare. She has been an educator for the
25 college -- community college district for 28 years. No

1 student has complained about her saying that she is a
2 horrible teacher. She loves teaching.

3 Actually, you know this, she's been with the
4 District for 28 years. She's 65 years old. She could
5 retire. Collect a full pension, get another job, and
6 collect on that, too. The reason why she hasn't done
7 that is because she loves to teach. It would have been
8 a lot easier for her to say: Hey, listen, if you're
9 going to humiliate me this way, if you're going to beat
10 up on me this way, I'm just going to retire. I'm going
11 to bow out. The reason why she didn't do that is
12 because it's wrong to bow out in the face of unjustified
13 charges and it's wrong to leave your job when you love
14 your job and you deserve your job and you haven't done
15 anything wrong.

16 The last thing that I'd like to say within my
17 ten minutes is, you know, God, termination? Even --
18 even if the District is right, does this warrant
19 termination for a scholar who's worked for the District
20 for 28 years?

21 Absolutely not. The punishment, the sanction
22 is not to measure it with the alleged underlying
23 misconduct even if you believe the underlying
24 misconduct. And a principle of justice which should
25 adhere in this proceeding is proportionality.

1 The District's, the Administration's proposed
2 sanction overreaches in its allegations, overreaches in
3 its misinterpretation of the applicable rules and
4 overreaches in its sanction, all the while ignoring the
5 totality of this scholar's -- of this community college
6 professor's lifetime accomplishments in 28 years serving
7 this District. Thank you.

8 CHAIRPERSON CRUDUP: Thank you. Mr. Uppal, you
9 can call your first witness.

10 MR. UPPAL: Excellent. We're going to call our
11 expert, Sean Garrison. Where would the Committee like
12 him to sit? At the end of the table?

13 (Whereupon the witness enters the hearing
14 room.)

15
16 MR. UPPAL: Mr. Lopez was out in the hall and
17 indicated he wanted to sit in as a member of the public.
18 If we can accommodate him, Mr. Chair?

19 MR. MONTROYA: He is not one of our witness.

20 MR. UPPAL: He is not our witness.

21 MR. MONTROYA: But we believe he has a right to
22 be here as a member of the public and a member of the
23 District community.

24 MR. UPPAL: We're fine with that.

25 THE WITNESS: Where am I going?

1 MS. BLACH: Finished with the witness.

2 MR. UPPAL: I'd like to call my next witness.

3 MR. MONTOYA: Five minutes left of their whole
4 case? That is our view.

5 MR. UPPAL: I'd like to call my witness now.
6 I'd like to call President Anna Solley.

7

8 ANNA SOLLEY,
9 called as a witness herein, having been first duly
10 sworn, was examined and testified as follows:

11

12 DIRECT EXAMINATION

13

14 BY MR. UPPAL:

15 Q. Good afternoon, Dr. Solley. Could you please
16 tell the Committee what position you hold with MCCC?

17 A. Yes. I'm President of Phoenix College.

18 Q. And if there is a problem or a headache or an
19 insubordinate employee who doesn't follow the law,
20 doesn't follow directives, whose desk does it ultimately
21 land on at Phoenix College?

22 A. It is my responsibility. I serve as the CEO of
23 the college and I'm responsible for all the operations
24 of the institution. So, any issue that affects an
25 employee, that affects a student, that affects budget,

1 any challenges that we face are ultimately my
2 responsibility.

3 Q. So, there's this phrase, and tell me if it's
4 accurate, does the buck stop with you?

5 A. Absolutely.

6 Q. And if there's a headache, it's your headache?

7 A. Absolutely.

8 Q. So, in your own words, Dr. Solley, would you
9 please tell the Committee, face them and tell them why
10 you are recommending Dr. Cleopatria Martinez for
11 termination?

12 A. Committee Members, I am recommending that Dr.
13 Martinez be terminated for several reasons. One
14 certainly deals with the infringement of copyright and
15 fair use violations; in addition to that, repeated
16 attempts to not follow the Governing Board policies and
17 procedures; in addition to that, repeated attempts not
18 to follow my directives, my directions; and not just my
19 directions, but the directions and advice of our staff
20 and our faculty and her Chair; and then, of course,
21 another issue has to do with the most recent situation
22 in regards to violation of the Cash-Handling Policy.

23 And then also because we are very concerned
24 about potential liability, this morning's expert
25 witness, Sean Garrison, talked in detail about some of

1 the potential threats, not only to our college but he
2 gave examples of previous situations where there had
3 been losses and we're very concerned about that because
4 we do have limited resources. We're good stewards of
5 the public resources and we want to ensure that those
6 resources are deployed for the right purpose, to promote
7 and support student's success, to promote and support
8 teaching and learning, and not to put us in the
9 defensive posture of defending a very expensive
10 lawsuits.

11 Q. So, if a lawsuit had resulted as a result of
12 Dr. Martinez's copyright violations or her attempts to
13 evade the limitations that were placed on her, as a
14 result of those copyright violations all that money and
15 all those damages that Mr. Garrison testified about,
16 where would that money come from? Who would pay the
17 attorney's fees? Who would pay the damages?

18 A. Those funds would come from my college. And we
19 are experiencing some budget challenges, not just my
20 college but in the system. We have lost some
21 considerable funding from the State, and as a result of
22 that, that would mean that rather than hiring faculty
23 and staff or providing support for very specific
24 programs that would support student success, we would
25 have to use those resources in turn to defend our

1 colleagues against these lawsuits.

2 Q. So, instead of spending the money for students,
3 you have to spend it fighting a lawsuit?

4 A. That is correct.

5 Q. And what about with respect to the complaints
6 that you've received from students that they couldn't
7 even get receipts from Dr. Martinez after she sold them
8 packets of materials, how does that impact your request
9 for termination?

10 A. That is an indication of willful and
11 intentional behavior on behalf of Dr. Martinez, because
12 it demonstrates that she is not willing to follow
13 directives, she was not willing to follow instructions.
14 And we have been working with Dr. Martinez for the last
15 four years. We've met with her, we've counselled her,
16 we've advised her.

17 And, again, the latest indication is that she's
18 not going to change her behavior and she's going to put
19 us in a very precarious situation and it's really
20 beginning to affect students. And if anybody knows
21 anything about me, I stand for -- I'm a person of
22 integrity; I stand for excellence. I want our students
23 to have the best because they deserve the best.

24 CHAIRPERSON CRUDUP: Okay. One last question.

25 MR. UPPAL: Okay. If the Committee would

1 indulge me, I would like one final question.

2 MR. MONTOKYA: What about my turn?

3 MR. UPPAL: I said one final question, Mr.
4 Montoya.

5 CHAIRPERSON CRUDUP: One question.

6 Q. BY MR. UPPAL: Do you have any final comment
7 that you would like to make to the Committee with
8 respect to your level of trust in Ms. Martinez [sic] and
9 what you would like the Committee to do or not do?

10 MR. MONTOKYA: Object to him asking an
11 open-ended question when his time is already expired.
12 And he's been repeatedly warned by the Committee that
13 you are going to hold him to his time so that he would
14 expend it wisely.

15 MR. UPPAL: Mr. Chairperson, how many minutes
16 has Mr. Montoya used making speeches and objections,
17 these same objections over and over and over. That time
18 should come back to me.

19 MR. MONTOKYA: If he wouldn't completely --

20 CHAIRPERSON CRUDUP: Just one minute.

21 MR. MONTOKYA: -- do the same thing over and
22 over --

23 MR. UPPAL: One question. One minute.

24 MR. MONTOKYA: -- I wouldn't have to do that.

25 CHAIRPERSON CRUDUP: You may proceed.

1 Q. BY MR. UPPAL: So the question was, which the
2 Committee Chairperson has just allowed you to answer is:
3 Could you please tell the Committee in your own words
4 what level of trust you have in Dr. Martinez to follow
5 the law, follow the directives, follow orders that you
6 have received [sic], and what you would like -- or what
7 your request is of the Committee in this matter?

8 A. I do not trust that Dr. Martinez would comply
9 with our directive; I do not trust that she will follow
10 the law; I do not trust she will abide by Governing
11 Board policies and procedures. I respectfully request
12 that the Committee recommend to our Chancellor -- or,
13 the Governing Board, excuse me, termination as per my
14 request, my recommendation.

15 CHAIRPERSON CRUDUP: Okay. Thank you.

16
17 CROSS-EXAMINATION

18
19 BY MR. MONTOYA:

20 Q. You believe that Professor Martinez violated
21 copyright law, right?

22 A. Yes.

23 Q. But that's not your independent conclusion, is
24 it? Because you're not a copyright law expert, right?

25 A. It is not my independent conclusion but we did